by either party and any interference will be enjoined. *Laighton* v. *City of Carthage*, 175 Fed. 145 (Circ. Ct., S. W. D. Mo.).

A city may be given the power to grant a franchise. *Los Angeles Water Co.* v. *Los Angeles*, 88 Fed. 720. When a company whose franchise has expired continues operations for some time with the consent of such a city, a grant of a franchise is implied. *Cedar Rapids Water Co.* v. *Cedar Rapids*, 118 Ia. 234. See *Cincinnati Ry. Co.* v. *Cincinnati*, 44 N. E. 327 (Oh.) The relation thus created, being of uncertain length, can be terminated by either party. But while it exists the company remains a public service company and is subject to all the obligations incident thereto. It must continue to serve all at reasonable rates and is subject to regulation. *Cedar Rapids Water Co.* v. *Cedar Rapids*, *supra*. Public service in general involves also the duty to give reasonable notice of withdrawal from service. See 16 HARV. L. REV. 363, 555–566. In the case of a water-supply company it would seem that the city must be given a reasonable time to procure a substitute. The expiration of the franchise might well be a sufficient notice to the city, if the company chose to withdraw at that time. But if it continues to operate thereafter and if we assume, as the court does, that it is not acting illegally in so doing, there appears to be no good reason for releasing it from the duty to give due notice of its withdrawal. The very undesirable result of the principal case seems unsupportable.

RULE AGAINST PERPETUITIES — SEPARABLE LIMITATIONS IN TRUST FOR SALE. — A testator left property to trustees to pay the income to his children for life, each child having a power to appoint to his or her prospective wife or husband for life. Upon the death of the last surviving child and of such wives and husbands as should take, the trustees were directed to sell. None of the children ever exercised the power. *Held*, that the trust for sale is valid. *In re Davies & Kent's Contract*, 45 L. J. 206 (Eng., Ch. D., Feb. 17, 1910).

In England a trust for sale which may become operative only after lives in being and twenty-one years is void under the rule against perpetuities. *Goodier* v. *Edmunds*, [1893] 3 Ch. 455; *In re Appleby*, [1903] 1 Ch. 565. The period is reckoned to the time when the trust becomes operative, so that, even though the trust for sale may be regarded as a vested interest, it is nevertheless assailable as a perpetuity. See *Goodier* v. *Edmunds*, *supra*; *In re Daveron*, [1893] 3 Ch. 421. In the principal case, inasmuch as one of the children might have married and appointed to a person not born at the death of the testator, the trust for sale might not have become operative within the required limits. Nevertheless it is held good, seemingly by separating the limitation into two limitations, in one of which the trust for sale is to take effect on the death of the survivor of the children in the event of no appointment being made. Such a limitation would be valid. This must be regarded as an exception to the rule that a gift expressed in one limitation cannot be divided unless separable in its terms. See GRAY, RULE AGAINST PERPETUITIES, 2 ed., §§ 331, 338.

TAXATION — COLLECTION AND ENFORCEMENT — EQUITY JURISDICTION. — A *bonâ fide* holder of a duly authorized county bond, having obtained judgment against the county, which by various devices had succeeded in evading payment, filed a bill in equity against the defendant railroad which was a taxpayer of the county. He alleged that the assessment of the defendant's property towards the payment of the judgment created a lien in his favor which he was entitled to foreclose. The defendant demurred on the ground that the tax could be recovered only by the proper local official, as provided by statute. *Held*, that the demurrer must be sustained. *Preston* v. *Chicago, St. L. & N. O. R. Co.*, 175 Fed. 487 (Circ. Ct., W. D. Ky.).

Since a special remedy of another nature was provided by the state legislature, the court properly refused to allow a suit by the creditor in his own name. *Oliver*

v. *Colonial Gold Co.*, 93 Mass. 283. The opinion declares, however, that in the absence of statutory authority a suit in equity could not be maintained for the collection of taxes assessed upon property. See *Heine* v. *The Levee Commissioners*, 19 Wall. (U. S.) 655. Though such a proposition seems to have the support of the authorities, it is submitted that upon principle exception may be taken. It is conceded that when there exists a power to tax, incidental to power to incur the debt, a duty to tax, dependent upon a valid debt, and a refusal by the proper official to enforce the tax, mandamus will lie to make that officer perform his ministerial duty. *Thompson* v. *Allen County*, 115 U. S. 550. If, however, the official resigns before he can be served with the writ, it seems to follow that we have a clear case for equity jurisdiction. There is no adequate and complete remedy at law. *Rees* v. *City of Watertown*, 19 Wall. (U. S.) 107. So on well recognized theories it seems that equity, even without express statutory authority, should see that the recalcitrant officer's duty is done, ordering its own official to levy and collect the taxes named, in conformity with the laws of the state for the collection of such taxes. *Welch* v. *Ste. Genevieve*, 1 Dill. (U. S.) 130. See *Supervisors* v. *Rogers*, 7 Wall. (U. S.) 175.

TAXATION — PARTICULAR FORMS OF TAXATION — APPLICATION OF INHERITANCE TAX TO EXECUTION BY FOREIGN WILL OF POWER CREATED IN DOMESTIC WILL. — A, by a New York will, gave B a power of appointment over a trust fund. B, in a New Jersey will, exercised the power in favor of C. Both B and C came within the one per cent class of the New York Transfer Tax Act of 1897. Under the law existing when A died they would have been exempt. *Held*, that C takes the fund free from the New York transfer tax. *In re Kissel's Estate*, 121 N. Y. Supp. 1088 (Sur. Ct.).

Estates created by the execution of a power of appointment are as a general rule treated as if created by the instrument raising the power. Thus a suspension of alienation in the second instrument is invalid if such would have been its effect annexed to the estates in the first instrument. *Genet* v. *Hunt*, 113 N. Y. 158. And the validity of the exercise of a power is tested by the law of the jurisdiction in which it was created. *Cotting* v. *De Sartiges*, 17 R. I. 668. But for the purposes of taxation, statutes both in England and in this country have treated the estates of the appointees as derived from the donee of the power. *Attorney-General* v. *Upton*, L. R. 1 Exch. 224; *Appeal of Seibert*, 110 Pa. St. 329; N. Y. TAX LAW, § 220, par. 5. The tax upon the execution of the power is not a tax upon property but upon the exercise of a privilege. *Chanler* v. *Kelsey*, 205 U. S. 466. There appears no reason why the estate of the appointee should not be taxed under both instruments since both are necessary to his title, but such is not the interpretation put upon the statutes. *Vandiest* v. *Fynmore*, 6 Sim. 570; *Matter of Howe*, 86 N. Y. App. Div. 286. In the principal case, since the creation of the power was not taxable and since its execution was effected under a New Jersey instrument, the decision seems sound.

TELEGRAPH AND TELEPHONE COMPANIES — STATUS OF COMPANIES AS ENGAGED IN PUBLIC EMPLOYMENT — OBLIGATION TO SERVE ALL AT REASONABLE RATES. — *Held*, that a telegraph company is entitled to service from a telephone company at the same rates as other business customers. *Postal Telegraph-Cable Co. of Tennessee* v. *Cumberland Telephone & Telegraph Co.*, 43 N. Y. L. J. 165 (U. S. Circ. Ct., Mid. D. Tenn., March 31, 1910).

On a general theory that the value of service to the consumer is a factor in the determination of rates, the defendant sought to justify the differentiation in the principal case. Recent federal authority, indeed, allows a carrier in rating different commodities to charge most heavily those which can best afford to pay. *Interstate Commerce Commission* v. *Chicago Great Western Railway Co.*, 141 Fed. 1003. But, as another circuit had recognized, where the cost of carrying different